IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11017 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINABEN I.JOSHI

Versus

DIR. OF PENSION AND PROVIDENT FUND

Appearance:

MR ZARANA S DESAI, for
MR HJ NANAVATI for Petitioner No. 1
MR BY MANKAD, AGP for Respondents.
RULE SERVED for Respondents No. 2-3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 20/12/2001

ORAL JUDGEMENT

Leave to add a new party - The District Education Officer, Surat, as respondent no. 4 to this petition, is granted.

2. This petition has been filed for declaration that the petitioner is entitled to pensionary benefits for her services from 22-7-1953 to 12-6-1960 and for a direction to the respondent to consider the services rendered by the petitioner from 22-7-1953 to 13-6-1960 as qualifying services for pension and for a direction to the respondent authority to review and refix the pension of the petitioner after taken into consideration the services rendered by the petitioner from 22-7-1953 to 13-6-1960 as an Assistant Teacher in the school run by the School Board, erstwhile Surat Municipality, Surat and Madresa Tayabias School, Surat and to pay revised pension as per her entitlement for the pension.

3. The petitioner rendered her services as a teacher from 22-7-1953 to 9-6-1958 in Municipal Board School, Surat and from 9-5-1958 to 2-1-1959 in the Grant-Aid-School. Thereafter, the petitioner rendered her services as a Secondary Teacher from 13-6-1960 to 30-6-1984 when the petitioner took voluntary retirement on 30-6-1984. As the petitioner opted for pensions scheme she was given pension on the basis of the services rendered by her from 1962 to 1984. However, her services prior 1960 which was required to be counted for the pension and the same was not taken into consideration while fixing the pension of the petitioner. As such, the petitioner is getting less pension than the actual entitlement. The petitioner made representation before the respondent no.2 vide letters dated 3-7-1986, 17-12-1986 and 4-8-1988 for providing necessary details. The respondent no. 3 school could not do anything in the absence of service book which required to be transferred to the respondent no. 3 by the Municipal School Board, Surat Municipal Corporation, Surat. The petitioner made a representation to the Director of Treasury and Accounts, Director of pension vide her representation dated 18-3-1989 and 9-10-1991. The petitioner also made representation on 17-2-1991 before the Municipal School Board, Surat. The petitioner was informed by the Administrative Officer, Surat vide letter dated 8-2-1991. The petitioner sent another letter to the Administrative Officer, Ahmedabad on 6-3-1992 to give her service book so as to enable her to get more pensionary benefits. The pension for the service rendered for the period from 1953 to 1960 has not been granted while fixing the pensionary benefits and hence this petition.

4. Learned counsel for the petitioner relied on the Government Resolution dated 28-1-1976 whereby the Government has directed such staffs of Non-Government School in Secondary School who have rendered the services

earlier in the Primary School under the District School Board and / or Municipal School Board should be allowed to count that service as qualifying services for pension under the aforesaid Scheme provided that the service rendered by them in DSC-MSB was pensionable under the Government Resolution, Education and Labour Department, State of Gujarat, dated 10-10-2001 as amended from time to time.

5. On behalf of the respondent no. 1, the affidait-in-reply has been filed wherein it is stated that the case of the petitioner for pensionary benefits has already been transmitted to the office of the respondent no. 1, Director of Pension and Provident Fund, calculating the services of the petitioner with effect from 13-6-1960 to 13-7-1984 till her voluntary retirement. As no revised pension case has been received through the District Education Officer, Surat, for revising the pension after joining the service rendered prior to June 1960 in the Municipal School Board and therefore the Director of Pension and Provident could not take any decision and as and when the revised pension case for counting the services from 22-8-1953 to 12-6-1960 is transmitted to the respondent no. 1's office, it will be decided as expeditiously as possible and in absence of any proposal the office of the respondent no. 1 has not to pass any order. The pensionary benefits for the period from 13-6-1960 to 30-7-1984 has already been cleared and now remaining claim which ought to have been lodged through the District Education Officer, Surat is not transmitted to the office of the respondent no. 1.

6. I have heard the learned counsel for the parties and perused the material on record.

7. Learned counsel for the petitioner submitted that in view of the Government Resolution dated 28-1-1976, the petitioner is entitled to the pension for the earlier services rendered from 22-7-1953 to 12-6-1960. But the petitioner has not been paid pensionary benefits in respect of the qualifying service which has been declared by the aforesaid Government Resolution as qualified service.

8. The petitioner has also filed certain documents including the certificate issued by the competent authority dated 10/13-6-1986, 8-2-1991, 8-9-1986, 16-2-1987, 1-5-1986 and 20-9-1986 as well as the representation to the District Education Officer, Surat on 6-3-1992 but the District Education Officer, Surat the

respondent no.4 has not sent the necessary pension papers to the authority concerned calculating the services rendered by the petitioner prior to 1960 for the purpose of pensionary benefits.

9. I have carefully considered the contentions made by the learned counsel for the parties and perused the relevant material on the record.

10. Learned A.G.P. contended that the matter can be decided by the District Education Officer, Surat respondent no. 4 if any representation is made by the petitioner within stipulated period. Learned counsel for the petitioner suggested that the present petition may be treated as a representation of the petitioner and the authority concerned may be directed to consider and decide the same in accordance with law and in light of the Government Resolution dated 18-1-1986 within the stipulated time.

11. I think it would be just and proper that this petition be treated as the representation of the petitioner with a liberty to the petitioner to file additional documentary evidence before the respondent no. 4. Therefore, the respondent no. 4 District Education Officer, Surat is directed to decide the representation of the petitioner in accordance with law and in light of the aforesaid GR dated 28-1-1976 as well as after taking taking consideration the relevant pensionary benefits for the service rendered by the petitioner prior to 1960, within two months from the date of receipt of a certified copy of this order. The respondent no. 4 is further directed to prepare all necessary papers with regard to the pensionary benefits of the petitioners and shall send the same to the respondent no. 4 within a period of four weeks thereafter. The respondent no. 1 Director of Pension and Provident Fund, Lal Darwaja, Ahmedabad, is directed to refix the pension of the petitioner within one month from the date of receipt of the papers from the respondent no. 4.

12. With the above observations and direction, this petition stands allowed. Rule is made absolute to the aforesaid extent, with no order as to costs. D.S. is permitted for the respondent no. 4.

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/JVSatwara/